

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17645 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SANJAYSINH MANGALSINH MAHIDA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17645 of 2003
MS SUBHADRA G PATEL for Petitioner No. 1
Ms.Mita S Panchal, AGP for Respondent No. 1-3
-

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this
petition under Article 226 of the Constitution of India

for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 4.12.2003 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that two prohibition offences were registered against him before Northern Division Prohibition Police Station at C.R.No.841/03 and 1661/03 on 20.6.2003 and 7.11.2003 for offences punishable u/s.66, 65, 81 and 116 of the Bombay Prohibition Act, 1949.

3. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities. On the strength of the aforesaid two registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner was required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order and accordingly, the order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. The petitioner has challenged the said order of detention on several grounds. It has been contended that the representation of the petitioner was not promptly dealt with and there was a delay in taking decision thereon. That therefore, the petitioner's right of getting decision on his representation within a reasonable time has been denied and, therefore, further continuance of detention of the petitioner is not legal and justifiable. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita Panchal, learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, learned Advocate for the petitioner has submitted copy of a communication received from the Government dated 24.12.2003 which is taken on record. Learned AGP has drawn my attention to the affidavit at page 16 filed by the detaining authority. At the hearing it has been contended that the representation of the petitioner was not considered within reasonable time. It has been argued that the

representation of the petitioner dated 12.12.2003 was received by the detaining authority on 15.12.2003 and the detaining authority had forwarded it to the State Government on the same day and the State Government had decided the same on 24.12.2003. That there was a delay in taking decision thereon. She has submitted a communication received from the State Government dated 24.12.2003. In the affidavit of the detaining authority at page 16 in para 10 thereof it has been stated that the representation dated 12.12.2003 was received by him on 15.12.2003. That as the detention order was already approved by the State Government, the said representation was forwarded to the State Government on the date of receipt i.e. on 15.12.2003 itself. Learned AGP contends that the above representation was received by the State Government on 22.12.2003. She also states that the matter was placed before the concerned Secretary and there it was decided on 24.12.2003. That therefore, there was no delay in taking the decision thereon. She further states that the decision was immediately conveyed to the detenu. The aforesaid communication of the State Government shows that it was received by the jail authority and thereafter it was conveyed to the petitioner on 1.1.2004.

7. On the aforesaid factual aspect of the case, it becomes clear that though the representation of the petitioner was received by the Office of the Commissioner of Police on 15.12.2003 and though it was shown to have been despatched on the very day, the representation was received by the State Government after a week or little more than that. Same way, though the decision was taken on 24.12.2003, it was conveyed to the petitioner on 1.1.2004. This shows that there was delay at both the places. Learned AGP contends that it was postal delay and, therefore, the petitioner cannot get the benefit of delay.

8. In the present case, it is not clear if there was postal delay or there was delay on account of inaction on the part of the two offices. It may be that the representation was lying in the outward branch of the Commissioner of Police. Same way, it is also possible that the representation would be lying in the inward branch of the State Government. There is no further explanation on this aspect. The State Government has not filed affidavit to show the said delay. In that view of the matter, it is difficult to accept that the delay can be attributed only to the postal delay.

9. This shows that the representation of the

petitioner was not decided within reasonable time. It is well settled that the detenu has every ready to submit effective representation against the detention. The right is coupled with the right to get the representation decided within a reasonable time. If the right to submit effective representation is denied or if the right to receive the decision thereon within a reasonable time is denied, then it would amount to denial of the said constitutional right. If the constitutional right of the petitioner under Article 22 (5) of the Constitution of India is shown to have been denied, then the further continuance of the detention of the petitioner cannot be sustained in the eye of law. In the present case also there appears to be delay in taking decision on the representation of the petitioner and in view of the unexplained delay, it is fatal to the order of detention on the ground of delay in deciding the representation. In that view of the matter, further continuance of the detention of the petitioner cannot be sustained in the eye of law. Therefore, the petitioner is required to be released from detention which can be done by quashing and setting aside the order of detention.

6. It is not much in dispute that the petitioner was detained in exercise of the powers u/s.3(2) of the said Act on the ground that the petitioner was a "bootlegger" and his activities amounted to a threat to public order. The learned advocate for the petitioner has contended that two offences under the Bombay Prohibition Act, 1949, were registered against the petitioner. The stray offence registered against the petitioner could not lead to an inference that the petitioner's alleged bootlegging activities raised a threat to public order. Therefore also, the order of detention is not legal.

7. For the foregoing reasons, this petition is allowed. The impugned order dated 04.12.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

